

110TH CONGRESS
2D SESSION

S. 3734

To ratify a water settlement agreement affecting the Pyramid Lake Paiute Tribe, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 11 (legislative day, DECEMBER 10), 2008

Mr. ENSIGN (for himself and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To ratify a water settlement agreement affecting the Pyramid Lake Paiute Tribe, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pyramid Lake Paiute
5 Tribe Fish Springs Ranch Settlement Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **AGREEMENT.**—The term “Agreement”
9 means the agreement entitled “Fish Springs Ranch
10 Water Rights Settlement Agreement” and dated

1 May 20, 2007 (including any amendments and ex-
2 hibits to that agreement).

3 (2) ENVIRONMENTAL IMPACT STATEMENT.—
4 The term “environmental impact statement” means
5 the final environmental impact statement for the
6 North Valleys Rights-of-Way Projects prepared by
7 the Bureau of Land Management (70 Fed. Reg.
8 68473).

9 (3) FINAL PAYMENT DATE.—The term “final
10 payment date” means the date on which Fish
11 Springs pays to the Tribe the final installment
12 amount, as provided in the Agreement.

13 (4) FISH SPRINGS.—The term “Fish Springs”
14 means the Fish Springs Ranch, LLC, a Nevada lim-
15 ited liability company (or a successor in interest).

16 (5) PROJECT.—

17 (A) IN GENERAL.—The term “Project”
18 means the project for pumping and transfer by
19 Fish Springs of not more than 8,000 acre-feet
20 of groundwater per year, as described in the en-
21 vironmental impact statement and the record of
22 decision.

23 (B) INCLUSION.—The term “Project” in-
24 cludes the pumping and transfer of not more
25 than 5,000 acre-feet of groundwater per year

(in addition to the acre-feet referred to in subparagraph (A)) in accordance with the Agreement, including the acquisition by Fish Springs of the rights and approval to pump that groundwater in accordance with Federal and State law.

(C) EXCLUSIONS.—The term “Project” does not include—

(i) the project proposed by Intermountain Water Supply, Ltd., and described in the environmental impact statement; or

(ii) any other project or activity not otherwise specified in this Act.

(6) RECORD OF DECISION.—The term “record of decision” means the public record of the decision of the District Manager of the Bureau of Land Management for the State of Nevada issued on May 31, 2006, regarding the environmental impact statement and the Project.

(7) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(8) TRIBE.—The term “Tribe” means the Pyramid Lake Paiute Tribe of Indians organized under section 16 of the Act of June 18, 1934 (commonly

1 known as the “Indian Reorganization Act”) (25
2 U.S.C. 476).

3 **SEC. 3. RATIFICATION OF AGREEMENT.**

4 (a) IN GENERAL.—Except as provided in subsection
5 (c), and except to the extent that a provision of the Agree-
6 ment conflicts with this Act, notwithstanding any other
7 provision of Federal or tribal law, the Agreement is rati-
8 fied.

9 (b) EXECUTION OF AGREEMENT.—The Secretary
10 shall execute the obligations of the Secretary under the
11 Agreement (including any exhibit to the Agreement requir-
12 ing the signature of the Secretary) in accordance with this
13 Act.

14 (c) EXCEPTIONS.—

15 (1) CHOICE OF LAW.—Notwithstanding any
16 provision of the Agreement, the Agreement and this
17 Act shall be governed by applicable Federal law and
18 Nevada State law.

19 (2) WAIVER AND RETENTION OF CLAIMS.—Not-
20 withstanding any provision of the Agreement, any
21 waiver or retention of a claim by the Tribe or the
22 United States on behalf of the Tribe relating to the
23 Agreement shall be carried out in accordance with
24 section 4.

25 (d) ENVIRONMENTAL COMPLIANCE.—

1 (1) NO MAJOR FEDERAL ACTION.—The execu-
 2 tion of the Agreement by the Secretary pursuant to
 3 this Act shall not be considered to be a major Fed-
 4 eral action under the National Environmental Policy
 5 Act of 1969 (42 U.S.C. 4321 et seq.).

6 (2) COMPLIANCE ACTIVITIES.—The Secretary
 7 shall carry out all required Federal environmental
 8 compliance activities in executing the Agreement.

9 (e) COMPLIANCE WITH APPLICABLE LAW.—This
 10 section and the Agreement shall be considered to be in
 11 accordance with all applicable requirements of section
 12 2116 of the Revised Statutes (25 U.S.C. 177).

13 **SEC. 4. WAIVER AND RELEASES OF CLAIMS.**

14 (a) RELEASE OF CLAIMS AGAINST FISH SPRINGS.—
 15 In executing the Agreement pursuant to this Act, the
 16 Tribe and the Secretary, acting on behalf of the Tribe,
 17 shall waive and release all claims against Fish Springs—

18 (1) for damage, loss, or injury to water rights
 19 or claims of interference with or diversion or taking
 20 of water rights (including claims for injury to land
 21 resulting from such a damage, loss, injury, inter-
 22 ference, diversion, or taking under the Agreement)
 23 relating to the use of water by Fish Springs under
 24 the Agreement for the Project; or

1 (2) relating in any manner to the negotiation or
2 adoption of the Agreement.

3 (b) RELEASE OF CLAIMS AGAINST UNITED
4 STATES.—In carrying out the Agreement, the Tribe shall
5 waive and release any claim of the Tribe against the
6 United States (including all employees and agents of the
7 United States) relating in any manner to—

8 (1) damage, loss, or injury to water, water
9 rights, land, or any other resource due to loss of
10 water or water rights (including damage, loss, or in-
11 jury to hunting, fishing, gathering, or cultural rights
12 due to loss of water or water rights, claims relating
13 to interference with or diversion or taking of water
14 or water rights, and claims relating to a failure to
15 protect, acquire, replace, or develop water, water
16 rights, or water infrastructure) due to use of water
17 by Fish Springs under the Agreement for the
18 Project;

19 (2) the record of decision, the environmental
20 impact statement, or the Agreement; or

21 (3) the negotiation, execution, or adoption of
22 the Agreement or this Act, including—

23 (A) the use by the Tribe of funds paid to
24 the Tribe under the Agreement; and

1 (B) the acquisition and use by the Tribe of
2 land under the Agreement.

3 (c) EFFECTIVENESS OF WAIVERS AND RELEASES.—

4 (1) CLAIMS AGAINST FISH SPRINGS.—The waiv-
5 ers and releases under subsection (a) shall take ef-
6 fect on the final payment date.

7 (2) CLAIMS AGAINST UNITED STATES.—A waiv-
8 er or release under subsection (b) shall take effect
9 on the date on which the Tribe executes the waiver
10 or release.

11 (d) RETENTION OF CLAIMS BY UNITED STATES AND
12 TRIBE.—The Tribe and the Secretary, acting on behalf
13 of the Tribe, shall retain—

14 (1) all claims for enforcement of the Agreement
15 or this Act through such legal and equitable rem-
16 edies as are available in the appropriate United
17 States court;

18 (2) subject to the right of Fish Springs to carry
19 out the Project, the right to assert and protect any
20 right of the Tribe to surface or groundwater or any
21 other trust resource;

22 (3) all rights to claim or acquire a water right
23 in accordance with applicable law, and to use and
24 protect any water right acquired after the date of

1 enactment of this Act, that is not in conflict with the
2 Agreement and this Act;

3 (4) all claims relating to activities affecting the
4 quality of water, including any claim of the Tribes
5 under—

6 (A) the Comprehensive Environmental Re-
7 sponse, Compensation, and Liability Act of
8 1980 (42 U.S.C. 9601 et seq.) (including claims
9 for damages to natural resources);

10 (B) the Safe Drinking Water Act (42
11 U.S.C. 300f et seq.);

12 (C) the Federal Water Pollution Control
13 Act (33 U.S.C. 1251 et seq.); or

14 (D) a regulation implementing an Act re-
15 ferred to in subparagraphs (A) through (C);
16 and

17 (5) all rights, remedies, privileges, immunities,
18 and authorities not specifically waived and released
19 pursuant to this Act.

20 **SEC. 5. SATISFACTION OF CLAIMS.**

21 The benefits provided to the Tribe under the Agree-
22 ment and this Act shall be considered to be full satisfac-
23 tion of all claims of the Tribe and the United States
24 waived and released pursuant to section 4.

1 **SEC. 6. BENEFICIARIES TO AGREEMENT.**

2 (a) REQUIREMENT.—The parties to the Agreement
3 shall be the only beneficiaries of the Agreement.

4 (b) PROHIBITION.—Nothing in the Agreement or this
5 Act provides to any individual or entity third-party bene-
6 ficiary status relating to the Agreement.

7 **SEC. 7. JURISDICTION.**

8 A civil action relating to the enforcement of the
9 Agreement shall be filed in the United States District
10 Court for the District of Nevada.

11 **SEC. 8. MISCELLANEOUS PROVISIONS.**

12 (a) TRUCKEE-CARSON-PYRAMID LAKE WATER
13 RIGHTS SETTLEMENT ACT.—Nothing in this Act affects
14 any right or interest recognized or established in the
15 Truckee-Carson-Pyramid Lake Water Rights Settlement
16 Act (Public Law 101–618; 104 Stat. 3294).

17 (b) NO ESTABLISHMENT OF STANDARD.—Nothing in
18 this Act establishes a standard for the quantification of
19 a Federal reserved water right or any other claim of an
20 Indian tribe other than the Tribe in any other judicial or
21 administrative proceeding.

22 (c) OTHER CLAIMS.—Nothing in the Agreement or
23 this Act quantifies or otherwise adversely affects any
24 water right, claim or entitlement to water, or any other
25 right of any Indian tribe, band, or community other than
26 the Tribe.

1 **SEC. 9. NULLIFICATION DATE.**

2 If the Tribe fails to execute any waiver or release de-
3 scribed in section 4(b) by the date that is 90 days after
4 the date of enactment of this Act, the Agreement shall
5 be null and void.

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